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BAKER & BOTTS 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			MEINECKE DIAZ, SUSANNA M	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/730,266  
Filing Date: December 05, 2000  
Appellant(s): BOARDMAN, CHRIS

Manu J Tejawani (Reg. No. 37,952)  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 12, 2005 appealing from the  
Office action mailed May 12, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

None

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. The after final amendment was previously submitted and indicated as overcoming the rejection under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

The amendment after final rejection filed on November 7, 2005 has been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Felthaus et al. (U.S. Patent 5, 420, 786) in view of Berne (Berne, Supply Chain Savvy, Food Engineering, 1 August 1999 [GOOGLE]). Please note that the examiner interprets store size per the applicant's specification as the volume of sales for the specific product of interest (p. 10, lines 6-7). The examiner also notes that the sales data regardless of source is still sales data. That is, for example, data regarding sales received from a wholesale operation versus a retail operation is still sales data or demand for a manufacturer. The customer is the difference. Therefore, the sum of the sources of sales data equates to the total sales data. Felthaus et al. discloses a system and method for estimating product distribution using a product specific universe comprising:

- **[Claim 1]** defining a first product specific universe using wholesale purchasing data to determine a product specific store size for a first plurality of retail outlets (col. 5, lines 50-61, Felthaus et al. teach sampled sales outlets and unsampled sales outlets in an area. The outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. The examiner interprets pharmacies or other types of retail stores represent a group and distribution establishments represent another group, i.e., retail stores versus wholesale distributors.);
- defining a second product specific universe using sampled retail sales data to determine a product specific store size for a second plurality of retail outlets (col. 5, lines 50-61, Felthaus et al. teach sampled sales outlets and

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unsampled sales outlets in an area. The outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. The examiner interprets pharmacies or other types of retail stores represent a group and distribution establishments represent another group, i.e., retail stores versus wholesale distributors.);

- applying geo-spatial projection to the first product specific universe and the second product specific universe to determine product specific projection factors for retail outlets in the first and second universe (col. 4, lines 17-51, Felthausen et al. teach sales of a particular product are sampled at a first group of the pharmacies and are sent to a central station having a main processor and a group of work station processors. In the main processor, data representing the distances between the first group of pharmacies and each other pharmacy are generated. A weighting factor for the sales of the particular product at each of the sampled pharmacies in a neighborhood of the other pharmacy is generated.); and
- applying said product specific projection factors to sampled retail sales data for the product to estimate the sales of said specialty product in unsampled outlets (col. 2, line 59 to col. 3, line 25, and col. 9, lines 23-43, Felthausen et al. teach nearest neighboring outlet activity sources within spatial proximity of each known but unsampled outlet are identified and the estimate of unsampled outlets is assembled by processing information on the discrete spatial correlation pattern among neighboring activity sources. The distance between the selected sampled sales outlets and the unsampled sales outlets are combined with parameter characteristics characterizing each sales outlet to form a signal representing an estimate of sales of the product at the unsampled sales outlet. The estimated sales of the particular product is then generated for a range of unsampled stores according to the summation of the weighting factor of a sampled store times the sales volume for the same store.);
- **[Claim 7]** determining a product specific store size for a first plurality of retail outlets using wholesale sales data (col. 5, line 59 to col. 6, line 8, Felthausen et al. teach the outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. Product sales data generated at each outlet is preferably transferred to the central station via a line. The examiner interprets pharmacies or other types of retail stores represent a group and distribution establishments represent another group, i.e., retail stores versus wholesale distributors.);
- determining a product specific store size for a second plurality of retail outlets using retail sales data, said retail sales data identifying a prescriber who authorized the sales (col. 3, lines 49-66, and col. 5, line 59 to col. 6, line

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8, Felthausen et al. teach prescription sales for a prescribing physician in an area including sampled prescription sales outlets. The outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. Product sales data generated at each outlet is preferably transferred to the central station via a line. The examiner interprets pharmacies or other types of retail stores represent a group and distribution establishments represent another group, i.e., retail stores versus wholesale distributors.);

- applying geo-spatial projection to the first plurality of retail outlets to determine product specific projection factors for the retail outlets for which sampled retail sales data is available (col. 4, lines 17-51, Felthausen et al. teach sales of a particular product are sampled at a first group of the pharmacies and are sent to a central station having a main processor and a group of work station processors. In the main processor, data representing the distances between the first group of pharmacies and each other pharmacy are generated. A weighting factor for the sales of the particular product at each of the sampled pharmacies in a neighborhood of the other pharmacy is generated.);
- applying geo-spatial projection to the second plurality of retail outlets to determine product specific projection factors for the retail outlets for which sampled retail sales data is available (col. 4, lines 17-51, Felthausen et al. teach sales of a particular product are sampled at a first group of the pharmacies and are sent to a central station having a main processor and a group of work station processors. In the main processor, data representing the distances between the first group of pharmacies and each other pharmacy are generated. A weighting factor for the sales of the particular product at each of the sampled pharmacies in a neighborhood of the other pharmacy is generated.);
- applying said product specific projection factors to sampled retail sales data for the product to estimate the total prescriber activity in a region of interest (col. 4, line 52 to col. 5, line 17, Felthausen et al. teach sales of a prescription product of a prescribing physician are sampled at a first group of the pharmacies. The distance between the each of selected pharmacies and each other pharmacy is generated and a signal representative of the total sales of each pharmacy is stored. A weighting factor for each sampled pharmacy in a neighborhood of an unsampled pharmacy is generated. The sales volume of the prescription product for the prescribing physician is estimated using the prescription product sales volume for the physician at the pharmacy and the weighting factor.)

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Felthauser et al. fail to teach using wholesale purchasing data. Berne teaches supply chain solutions streamlines operations and upstream/downstream links, from raw materials through distribution producing corporate-wide efficiencies. Over the past five years, Kraft has installed software for finance, human resources and resource development. The company is now implementing the Prism system to optimize their supply chain control. The manufacturing process begins with a sales forecast. The input produces a production model working backwards to include where products will be sold, where they need to be shipped and the source plant for these products. The result is a plant production schedule. The software allows Kraft's conversion plants to develop and run production models for specific products with the ability to update model assumptions on a real time basis. Russell Stover Candies, in order to respond to customer requirements, has pressured suppliers to supply material fast and with less lead-time than ever before. To achieve the level of agility and responsiveness, it is essential to have access to accurate, real-time information and greater visibility into the entire supply chain. The extends to the time an order comes in, to anticipate delivery date, to when and how materials are coming in, to manufacturing constraints, and more since chocolate is a perishable product with a limited shelf life. Berne further teaches a Global Pipeline. Whether you are a food importer, manufacturer importing raw materials or exporting finished products, having a clear view into the global supply chain pipeline is vital. Liberty Richter, a specialty food importer representing more than 80 brands, supplies retail, foodservice and wholesale markets. The company faced two major problems with its operation; one was internal visibility

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into available inventory, both on-hand and in-transit that could be allocated to orders; and tracking actual cost of products to determine brand profitability (Para 1, 5, 9, 17, 19, and 42). In summary, Berne teaches a supply chain from manufacturer to customer to include wholesale distribution. The "sales forecast" and customer requirements strongly suggest purchasing data of wholesalers since wholesalers will purchase product from the manufacturer or supplier (i.e., Kraft, Russell Stover Candies, Liberty Richter) based on their demand within the supply chain. In other words, the sales forecast and purchasing plan for this application are equivalent since the only difference is associated with the source of the information, that is, the customer or supplier. Therefore, it would have been obvious to one of ordinary skill in the art to include wholesale purchasing data of Berne with the teachings of Felthausen et al. since Felthausen et al. teach estimating sales activity of a product (col. 2, lines 51-58). Delivering the right product to the customer when the customer wants it contributes greatly to customer satisfaction. Berne teaches that in order to achieve the level of agility and responsiveness we aspire to, it is essential that we have access to accurate, real-time information and greater visibility into the entire supply chain (Para 17). Therefore, having accurate information that allows the company to be responsive to customer's demands ensures they are producing the right product at the right time to deliver to the customer, which in turn ensures delivery of the right product to the customer when the customer want it, therefore, contributing to customer satisfaction.

- **[Claim 2]** said sampled retail sales data identifies an authorizing agent for said sales and wherein the estimated sales are attributable to said



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authorizing agent (Felthausen et al.: col. 4, lines 52-56, Felthausen et al. teach sales of a prescription product of a prescribing physician are sampled at a first group of the pharmacies).

- **[Claim 3]** the specialty products are pharmaceuticals and wherein the authorizing agent is a physician (Felthausen et al.: col. 4, lines 52-56, Felthausen et al. teach sales of a prescription product of a prescribing physician are sampled at a first group of the pharmacies).
- **[Claim 4 and 8]** the second product specific universe represents retail facilities not represented in the first product specific universe (Felthausen et al.: col. 5, lines 59-61, Felthausen et al. teach the outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product. The examiner interprets pharmacies or other types of retail stores representing a group and distribution establishments representing another group that is different than the other group).
- **[Claim 5 and 9]** the second product specific universe includes unsampled retail facilities (Felthausen et al.: col. 3, lines 1-5, Felthausen et al. teach the spatial correlation process between outlets is represented by the distribution pattern of each prescribers prescription activity among a local neighborhood of outlets (sample or unsampled).).
- **[Claim 6 and 10]** the unsampled retail outlets are assigned an average product specific store size based upon the sampled retail sales data (Felthausen et al.: col. 2, line 59 to col. 3, line 25, Felthausen et al. teach nearest neighboring outlet activity sources within spatial proximity of each known but unsampled outlet are identified and the estimate of unsampled outlets is assembled by processing information on the discrete spatial correlation pattern among neighboring activity sources. The distance between the selected sampled sales outlets and the unsampled sales outlets are combined with parameter characteristics characterizing each sales outlet to form a signal representing an estimate of sales of the product at the unsampled sales outlet.).
- **[Claim 11]** the combination of the first plurality of stores and the second plurality of stores represents substantially all of the retail outlets for the specialty product (col. 5, line 59 to col. 6, line 8, and col. 9, lines 11-43, Felthausen et al. teach the outlets may be pharmacies or other type of retail stores or distribution establishments all of which distribute a particular product.).

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**Claims 12-18** substantially recites the same limitations as that of claims 1-6 and 11 with the distinction of the recited method being a system. Hence the same rejection for claims 1-6 and 11 as applied above applies to claims 12-18.

**(10) Response to Argument**

Applicant argues that Felthausen et al. (U.S. Patent 5,420,786) and Berne (Berne, Supply Chain Savvy, Food Engineering, 1 August 1999 [GOOGLE]) neither alone nor combined teach or suggests estimating sales activity of a specialty product. Applicant further argues that Felthausen et al. does not teach or suggest defining a first product specific universe using wholesale purchasing data to determine a product specific store size for a first plurality of retail outlets. The applicant asserts applying the Berne article does not cure the failures of Felthausen et al..

In response, the applicants defines the terms specialty product and specialty market as referring to products used by, or directed to, specialized consuming populations, or otherwise require special handling (such as refrigeration) which tend to render broad market assumptions unreliable (Specification, p. 7, lines 19-22). The Applicant further states that for pharmaceutical sales, the data provide for the pharmacies generally identifies the physician, or prescriber, who generates the script authorizing the sale (Specification, p. 8, lines 14-15). Felthausen et al. teach that sales activity of products prescribed by a physician at both the sampled and unsampled outlets can be estimated by correlating sales activity data for the prescribing physician at the sampled outlets according to the distance between the sampled outlets and the unsampled outlets. "Product prescribed by a physician" meet the definition of "specialty

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product” as identified in the specification since “Product prescribed by a physician” is product that is directed to a specialized consuming population.

As to product specific universe, the Examiner notes that Felthaus et al. do not refer to the exact term “product specific universe”, however Felthaus et al. teach sales outlets where the outlets may be pharmacies or other types of retail stores or distribution establishments all of which distribute a particular product. The Examiner noted that Berne teaches a supply chain from manufacturer to customer to include wholesale distribution. The “sales forecast” and customer requirements strongly suggest purchasing data of wholesalers since wholesalers will purchase product from the manufacturer or supplier (i.e., Kraft, Russell Stover Candies, Liberty Richter) based on their demand within the supply chain. In other words, the sales forecast and purchasing plan for this application are equivalent since the only difference is associated with the source of the information, that is, the customer or supplier. The “product specific universe” of the applicant is a population identifier as to where the data is coming from, i.e., where in the supply chain flow, such as sales outlets or upstream/downstream links, from raw materials through distribution as used in Felthaus et al. and Berne, and does not render a patentably distinct feature as used by the applicant.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Susanna M. Diaz

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